

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

JANE DOE,

Plaintiff,

V.

**BOARD OF VISITORS, VIRGINIA
MILITARY INSTITUTE**

Defendant.

Case No.: 6:23CV00052

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR TEMPORARY STAY OF
PROCEEDINGS PENDING MEDIATION**

Defendant Board of Visitors, Virginia Military Institute (“VMI”), and Plaintiff Jane Doe, pursuant to Federal Rules of Civil Procedure 16 and 26, submit this joint motion to stay proceedings through November 19, 2024, so the parties may participate in mediation. In support of this Motion, the parties state as follows:

1. Doe filed her Complaint with this Court on September 14, 2023. (ECF No. 2).
2. Mediation is scheduled for November 19, 2024, with United States Magistrate Judge Kailani Memmer. (ECF No. 16).
3. The parties agreed early on that mediation was the best way to resolve this case due to the sensitive nature of the allegations (involving sexual harassment and/or sexual assault) and the young ages of the alleged victim and witnesses involved.
4. Over the last year, the parties have exchanged documents for settlement purposes and have exchanged and negotiated by monetary and non-monetary settlement offers and counteroffers. The parties have been operating under an informal stay agreement in anticipation of fully resolving this matter at mediation on November 19, 2024.

5. On October 16, 2024, during the joint pre-mediation call with Judge Memmer, the parties agreed to submit a formal motion to stay proceedings through the November 19, 2024 mediation date.

6. According to this Court's Pretrial Order, the deadline to complete discovery was October 16, 2024, and the deadline to file dispositive motions was October 31, 2024. (ECF No. 10). If the parties do not resolve this matter at mediation on November 19, 2024, the parties will obtain new trial dates and submit a revised and truncated scheduling order for this Court's review by November 22, 2024.

STANDARD OF REVIEW

This Court has discretion to stay discovery. Rule 16 provides that "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "The factors to be considered in determining whether there is good cause include the danger of prejudice to the non-moving party, the length of delay and its potential impact on judicial proceedings, the reason for the delay, and whether the movant acted in good faith." *Roe v. Howard*, No. 1:16-CV-562, 2017 WL 3709088, at *1 (E.D. Va. June 30, 2017).

Similarly, this Court also has discretion to stay entire proceedings. *See United States v. Georgia Pac. Corp.*, 562 F.2d 294, 296 (4th Cir. 1977) (citing *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). District courts often consider the following three factors when considering whether to stay proceedings: (1) judicial resources that would be saved by avoiding duplicative litigation; (2) hardship and inequity to the moving party; and (3) prejudice to the non-moving party. *Buzzell v. JP Morgan Chase Bank*, No. 3:13-CV-668, 2015 WL 5254768, at *2 (E.D. Va. Sept. 9, 2015), *aff'd*, 642 F. App'x 267 (4th Cir. 2016). As the

factors for staying discovery and staying entire proceedings are similar, the parties will address them together.

ARGUMENT AND AUTHORITIES

All factors in this case are met. *First*, there can be no prejudice to the non-moving party because there is no non-moving party; the parties are moving jointly and acting in good faith to resolve their dispute. *Second*, the delay on judicial proceedings is minimal and is being requested to allow for global mediation, which is scheduled for November 19, 2024, and could lead to a global resolution of the parties' dispute and spare judicial resources in this Court. *Third*, a stay is appropriate because the reason for the delay is that the parties have been working diligently to obtain resolution and are earnestly seeking a resolution. Further, nearly all witnesses are students in higher educational institutions and are in the middle of their semester but will be nearing completion of the semester after exams in late November/early December. *Finally*, the parties jointly represent that they are moving the Court in good faith and have been operating pursuant to a good-faith agreement to limit any discovery in an attempt to resolve the dispute.

The parties respectfully submit that good cause exists here beyond an agreement to mediate. Courts frequently permit similar joint motions to stay or have otherwise stayed cases to allow for the parties to attempt to resolve a matter without incurring the expense and distraction of continued litigation. *See, e.g., James River Air Conditioning Co. v. Batten & Shaw, Inc.*, No. 3:15CV223, 2015 WL 5247746, at *1 (E.D. Va. Sept. 8, 2015) (reciting in procedural history that the Court had "granted [a] consent motion to stay and stayed the matter" pending mediation); *see also Signature Flight Support Corp. v. Landow Aviation Ltd. P'ship*, 730 F. Supp. 2d 513, 517 (E.D. Va. 2010) (reciting in procedural history that "the bench trial in this case started but was stayed at the parties' suggestion that they would attempt to settle the case").

CONCLUSION

For the above reasons, the parties request that this matter be formally stayed through November 19, 2024. In the event the mediation is unsuccessful, the parties will submit a Joint Motion to Amend the Scheduling Order within three (3) days following the mediation to allow the parties to participate in truncated discovery and submit dispositive motions as needed.

Dated: November 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 13, 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing (ECF) to all counsel of record.

s/Olivia S. Moulds